UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re: Case No. 04-33702-GFK
Chapter 13

Ernest Martin Raehsler, Sr. and Velinda Alice Raehsler,

OBJECTION TO CONFIRMATION

Debtor(s).

- TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.
- 1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor(s).
- 2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and Wells Fargo Financial Acceptance requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.
- 3. Hearing on confirmation of the Plan is scheduled for **10:30 am** on **Thursday, August 26, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 228B, U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.
- 4. The petition commencing this Chapter 13 case was filed on June 23, 2004 and the case is now pending in this Court.
- 5. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2004 Ford Taurus, vehicle identification number 1FAFP53U64G124441 (the "Vehicle"). The value of the Vehicle is \$20,335.00.

- 6. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.
- 7. The Vehicle was purchased approximately 4 months before the Chapter 13 filing. The balance due to Wells Fargo Financial Acceptance as of the petition date totals \$19,604.94 together with interest accruing at the contract rate of 17.9%. The fair market value of the Vehicle is \$20,335.00. Accordingly, the claim of Wells Fargo Financial Acceptance.should be treated as secured to the extent of \$19,604.94 plus the costs of this objection to confirmation of \$225.00 resulting in a secured claim of \$19,829.94.
- 8. The Plan, however, provides for (i) Wells Fargo Financial Acceptance's secured claim of \$14,000 with interest accruing at 8%; (ii) total payment on Wells Fargo Financial Acceptance's secured claim of \$16,929.85; and (iii) monthly payments of \$125.00 commencing in month 3 for 8 months and \$396.25 commencing in month 11 for 41 months.
- 9. The Plan fails to satisfy Wells Fargo Financial Acceptance's secured claim plus interest utilizing the payments set forth by Debtor(s). An amortization of the proposed payments is attached hereto.
- 10. Wells Fargo Financial Acceptance submits that the Plan is not filed in good faith as Debtor(s) purchased this Vehicle approximately 4 months prior to filing the petition and are proposing to cram down the value by nearly \$6,000.00.
- 11. In light of the recent purchase, Wells Fargo Financial Acceptance submits that the replacement value is further supported by the recent purchase price.
- 12. Wells Fargo Financial Acceptance also submits that the interest rate of 8% is not adequate in light of the highly depreciable nature of the collateral, the relatively short job history of Debtors, the

extraordinary expenses and circumstance of the family and the fact that the payments under the Plan do

not cover the depreciation of the Vehicle until nearly 1 year after the filing date.

13. The Plan does not comply with the provisions of Chapter 13.

14. The Plan does not provide Wells Fargo Financial Acceptance with adequate protection of its

interest in the vehicle.

15. Movant gives notice that it may, if necessary, call A. Howard or another representative of

Wells Fargo Financial Acceptance to testify at the hearing.

16. Movant has incurred \$225 of costs and attorneys fees in connection with this objection that

must be included in the secured claim pursuant to 11 U.S.C. Section 506.

17. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE

USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully requests this Court to enter an

order denying confirmation of the Debtor' proposed plan and such other further relief as is just and

equitable.

Dated: August 12, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt

Bradley J. Halberstadt (#215296)

Attorneys for Movant

430 Oak Grove Street, Ste. 200

Minneapolis, Minnesota 55403

(612) 870-4100

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UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Ernest M., Sr. and Velinda A. Rachsler,

Bky. No. 04-33702

Debtor(s).

Affidavit of Andrew J. Howard

I, Andrew J. Howard, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

2004 Ford Taurus VIN# 1FAFP53U64G124441.

- 2. \$\sum_{19.604.94}\$ is the outstanding balance under the contract as of August 12, 2004.
- 3. \$1,474.89 is the amount of the existing delinquency under the contract.
- 4. \$19.604.94 is the fair market value of the Collateral.
- Yes Appropriate insurance has been verified.
- 6. N/A is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

Dated:

8/12/200

Andrew J. Howard

Bankruptcy Specialist

Subscribed and sworn to before me on August

12, 2004

Wells Fargo Financial Acceptance

Notary

LISA A. AARTHUN Notary Public Minnesota My Commission Espires Jan. 31, 2005

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Librilly Insurance coverage for bodily injury and motor vehicle damage caused to others to not included in this Contract unless checked and indicated. MOTOR VEHICLE SERVICE CONTRACT! With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contrally cover. This Service Contract will be in effect for MIA.				(1) On not sign into agreement optory opt one of the incompletely filled-in copy of this agreement (3) Under the law, you have the right to pay off in advance the full amount due and under certaint conditions to obtain a partial round of the filence-ochange. (4) IMPORTATION THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSTS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS. BY SIGNING BELOW RUYER AGREES TO THE TERMS AND ACKNOWLEDGES				
ASSENTINGENTY TO SEE CHARLES SEE OF PENNISSENT IS essigned to (865) 847 - 40.35. The Assigner, phone of present agreement. Under the terms of the ASSIGNATION SEE SEE SEE SEE SEE SEE SEE SEE SEE SE					S 1 AND REC VEC ER	EPT OF A COP MEST MARTIN	Y OF THIS COI RALLAS	ACKNOWLEDGES NTRACT.
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MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
415 MINNESOTA ST., ST. PAUL., MN 53101
CONFIRMATION OF LIEN PERFECTION - DERTOR NAME AND ADDRESS

Fest Class U.S. Postage PAID Perma No. 171 SI Paul. MN

RAEHSLER ERNEST MARTIN RAEHSLER VELINDA ALICE 4001 BLACKHAWK RD EAGAN MN 55122

MLM430

G0960S392 Title NR. 4DTSE Model FORD Your 1FAFP53U64G124441 02/21/04

1ST SECURED PARTY LIEN HOLDER

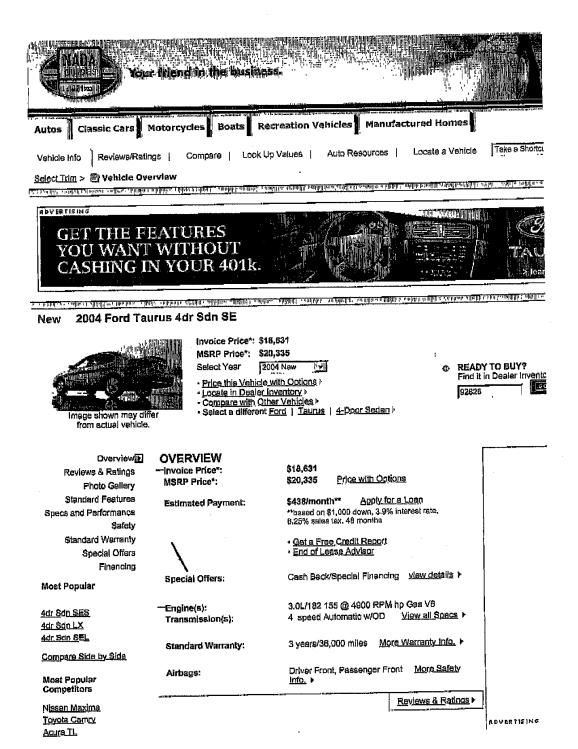
RETAIN THIS DOCUMENT - See reverse side of this form for removing this lien.

WELLS FARGO FINANCIAL ACCPET PO BOX 250 ESSINGTON PA 19029-0250

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	_	8.00%				
Number	Payment Amount	Interest	_	Polongo	(20% Depr.)	Potential Loss
Number	Amount	<u>Payment</u>	<u>rayment</u>	<u>Balance</u> 19,604.94	<u>Value</u> 19,604.94	<u>1.088</u>
1	0.00	130.70	(130.70)	19,735.64	19,278.19	457.45
2	0.00	131.57	(131.57)	19,867.21	18,956.89	910.32
3	0.00	132,45	(132.45)	19,999.66	18,640.94	1,358.72
4	125.00	133,33	(8.33)	20,007.99	18,330.26	1,677.73
5	125.00 125.00	133.39 133.44	(8.39)	20,016,38 20,024.82	18,024.75	1,991.62
7	125.00	133.50	(8.44) (8.50)	20,024.62	17,724.34 17,428.93	2,300.48 2,604.38
8	125.00	133.56	(8,56)	20,041.87	17,138.45	2,903.42
9	125.00	133.61	(8.61)	20,050.49	16,852.81	3,197.67
10	125.00	133.67	(8.67)	20,059.16	16,571.93	3,487.22
11	396.25	133.73	262.52	19,796.63	16,295.73	3,500.90
12 13	396.25 396.25	131.98 130.22	264,27 266,03	19,532.36	16,024,14	3,508.22
14	396,25	128.44	267.81	19,266.33 18,998.52	15,757.07 15,494.45	3,509.26 3,504.07
15	396.25	126.66	269.59	18,728.93	15,236.21	3,492.72
16	396.25	124.86	271.39	18,457.53	14,982,27	3,475.26
17	396.25	123.05	273.20	18,184.34	14,732.57	3,451.77
18	396.25	121.23	275.02	17,909.31	14,487.03	3,422.29
19	396.25	119.40	276.85	17,632.46	14,245.57	3,386.88
20 21	396.25 396.25	117.55	278.70	17,353.76	14,008.15	3,345.61
21 22	396.25 396.25	115.69 113.82	280.56 282.43	17,073.20 16,790.77	13,774.68 13,545.10	3,298.52 3,245.67
23	396.25	111.94	284.31	16,506.46	13,319.35	3,187.11
24	396.25	110.04	286.21	16,220.25	13,097.36	3,122.89
25	396.25	108.14	288.11	15,932.14	12,879.07	3,053.07
26	396.25	106.21	290.04	15,642.10	12,664.42	2,977.68
27	396.25	104.28	291.97	15,350.13	12,453.35	2,896.79
28	396.25	102.33	293.92	15,056.22	12,245.79	2,810.43
29	396.25	100.37	295.88	14,760.34	12,041.69	2,718.65
30 31	396.25 396.25	98.40 96.42	297.85 299.83	14,462.50 14,162.66	11,841.00 11,643.65	2,621.50 2,519.01
32	396.25	94,42	301.83	13,860.83	11,449.59	2,319.01
33	396.25	92,41	303.84	13,556,98	11,258.76	2,298.22
34	396.25	90,38	305.87	13,251.11	11,071.12	2,180.00
35	396.25	88.34	307.91	12,943.21	10,886.60	2,056.61
36	396.25	86.29	309.96	12,633.24	10,705.15	1,928.09
37 38	396,25 396,25	84,22 82,14	312.03 314.11	12,321,22	10,526.73	1,794.48
39	396,25	80.05	314.11	12,007.11 11,690.90	10,351.29 10,178.77	1,655.82 1,512.14
40	396,25	77.94	318.31	11,372,59	10,009.12	1,363.47
41	396,25	75.82	320.43	11,052.16	9,842.30	1,209.86
42	396,25	73.68	322.57	10,729.59	9,678.26	1,051.33
43	396.25	71.53	324.72	10,404.87	9,516.96	887.91
44	396.25	69.37	326.88	10,077.99	9,358.34	719.64
45 46	396,25 396,25	67.19 64.99	329.06 331.26	9,748.92	9,202.37	546.55
47	396.25	62.78	333.47	9,417.67 9,084.20	9,049.00 8,898.18	368.67 186,02
48	396.25	60.56	335.69	8,748.51	8,749.88	(1.37)
49	396.25	58.32	337.93	8,410.59	8,604.05	(193.46)
50	396.25	56.07	340.18	8,070.41	8,460.65	(390.24)
51	396.25	53.80	342.45	7,727.96	8,319.64	(591.68)
52	396.25	51.52	344.73	7,383.23	8,180.98	(797.75)
53 54	396.25 396.25	49.22 46.01	347,03	7,036.20	8,044.63	(1,008.42)
55	396.25 396.25	46.91 44.58	349,34 351,67	6,686.86 6,335.19	7,910.55 7,778.71	(1,223.69) (1,443.52)
56	396,25	42.23	354.02	5,981.17	7,649.06	(1,667.89)
57	396.25	39.87	356,38	5,624.80	7,521.58	(1,896.78)
58	396,25	37.50	358.75	5,266.05	7,396.22	(2,130.17)
59	396.25	35.11	361.14	4,904.90	7,272.95	(2,368.04)
TOTALS 60	396,25 \$20,687.50	32.70 \$5,623.91	363.55 \$15.063.50	4,541.35	7,151.73	(2,610.38)
	G204007.50	<u>φυιυΔ3.71</u>	<u>\$15,063.59</u>			

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UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

Ernest Martin Raehsler, Sr. and Velinda Alice Raehsler,

Debtor(s).

In re:

Chapter 13

Case No.04-33702-GFK

MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

Wells Fargo Financial Acceptance submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2004 Ford Taurus, vehicle identification number 1FAFP53U64G124441 (the "Vehicle").

The Vehicle was purchased approximately 4 months before the Chapter 13 filing. The balance due to Wells Fargo Financial Acceptance as of the petition date totals \$19,604.94 together with interest accruing at the contract rate of 17.9%. The fair market value of the Vehicle is \$20,335.00.

The Plan, however, provides for (i) Wells Fargo Financial Acceptance's secured claim of \$14,000 with interest accruing at 8%; (ii) total payment on Wells Fargo Financial Acceptance's secured claim of \$16,929.85; and (iii) monthly payments of \$125.00 commencing in month 3 for 8 months and \$396.25 commencing in month 11 for 41 months.

The schedules indicate that Debtor(s) have been employed for 5 months and 2 years, respectively. The majority of the wages are coming from the debtor employed for only 5 months. The household consists of both debtors and 5 dependents. The plan is a 60 month plan. While the home is stated to need repair, only \$100 per month is allocated for this purpose.

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DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy Wells Fargo Financial Acceptance's secured claim plus interest.

First, the secured claim is understated. The replacement value of the Vehicle is at least \$20,335.00 – not \$14,000.00 proposed in the Plan. The Debtor(s) purchased this Vehicle approximately 4 months before the case was filed and are proposing that the value of the Vehicle dropped by over \$6,000.00.

Second, the interest rate is understated. *Till* indicates that the risk factor should be added to the prime rate. The Supreme Court was less than clear on what specifically should be used to determine an appropriate risk factor to be added to the prime rate. The plurality discussed the following three issues: (i) the circumstances of the bankruptcy estate; (ii) the nature of the security; and (iii) the duration and feasibility of the Chapter 13 Plan. In this case, all of these factors support a high risk factor.

The circumstances of this bankruptcy estate demonstrate a high risk factor. Debtor(s) filed this case approximately 4 months after purchasing the Vehicle. They are proposing a Plan that makes Movant wait for 3 months prior to receiving a payment and the payments are not enough to cover the interest and depreciation on the Vehicle for nearly 1 full year.

The Vehicle is depreciable collateral with a relatively high value. This newly purchased Vehicle does not have a big equity cushion. While there is a market for disposition, obtaining relief from stay and attendant costs of repossession and sale provide little prospect for recovery of the value of the Vehicle on the date the case was filed.

The Plan doesn't work. This is a maximum term plan and, when the Vehicle is revalued with an appropriate interest rate, there is not enough money to pay the secured claim with interest in 60 months.

There are no long-term jobs of Debtor(s). Admittedly, there are special medical and health circumstances

as well. During the 5 years in the Plan, there are indications that the house needs repair – but not a great

deal of money is set aside for that purpose. In short, this is a very tight plan and there are few options to

cure speed bumps that almost always happen in these cases. In short, the plan is not feasible.

Finally, it does not appear that this case was filed in good faith. Debtor(s) purchased this new

vehicle approximately 4 months before the case was filed and are proposing a substantial cramdown of

the balance and interest rate. These are the types of facts that justify denial of confirmation for bad faith.

CONCLUSION

For all of the reasons set forth herein, Wells Fargo Financial Acceptance respectfully requests that

the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: August 12, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt

Bradley J. Halberstadt (#215296)

Attorneys for Movant

430 Oak Grove Street, Ste. 200

Minneapolis, Minnesota 55403

(612) 870-4100

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U.S. BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:

Ernest Martin Raehsler, Sr. and Velinda Alice Raehsler

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-33702-GFK

Bradley J. Halberstadt, agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

.....

United States Trustee Suite 1015 300 South 4th Street Minneapolis, MN 55415 (Attorney for Debtor(s)) Craig W. Andresen 2001 Killebrew Drive, Ste. 330 Bloomington, MN 55425

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Debtor(s)) Ernest Martin Raehsler, Sr. 4001 Blackhawk Road Eagan, MN 55122

Velinda Alice Raehsler 4001 Blackhawk Road Eagan, MN 55122

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: August 12, 2004 Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re: Ernest Martin Raehsler, Sr. and Velin Debtor(s).	nda Alice Raehsler,	Case No. 04-33702-GFK Chapter 13 ORDER
Debtor(s). Appearances were noted this Order pursuant to the Federal Ru	Court for confirmation of the Chapte in the record. Based upon all the file ales of Bankruptcy Procedure. That confirmation of the Chapter 13	es and records, the Court makes
Dated:	Gregory F. Kishel United States Bankruptcy Ju	